

ORIGINAL

In the matter of:

COMPULSORY LICENSE FOR SECONDARY

TRANSMISSIONS BY CABLE SYSTEMS;

ROYALTY ADJUSTMENT PROCEEDING

CRT Docket 80-3

2000 L Street, N.W.  
Room 500  
Washington, D.C.

Thursday, December 11, 1980

The hearing in the above-entitled matter commenced  
at 10:05 a.m., pursuant to notice.

BEFORE:

CLARENCE L. JAMES, JR., Chairman

THOMAS C. BRENNAN, Commissioner

DOUGLAS E. COULTER, Commissioner

MARY LOU BURG, Commissioner

FRANCES GARCIA, Commissioner

## APPEARANCES:

FRITZ ATTAWAY, Attorney-at-Law  
Counsel for Copyright Owners

STUART F. FELDSTEIN, Attorney-at-Law  
Counsel for NCTA

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P R O C E E D I N G S

CHAIRMAN JAMES: The meeting will come to order.

This meeting is being called pursuant to the call of the Chair. The matter under discussion is the royalty rate adjustment for cable systems involved in secondary transmissions, CRT Docket 80-3.

All persons with a personal interest in this subject matter were personally notified. The Chair now recognizes Commissioner Garcia.

COMMISSIONER GARCIA: Thank you. Mr. Chairman, I move the Tribunal adopt an increase in the cable royalty rate. A draft of the regulations has been circulated to all commissioners. I ask that it be made a part of this record.

These regulations support an adjustment made on a system-by-system basis with the first adjustment being made as of the first semi-annual accounting period, 1981. Except for this change, the rest supports the copyright owner approach. Based on the record, it is my opinion this is the most equitable approach. I move the adoption of these regulations.

CHAIRMAN JAMES: Discussion or debate?

COMMISSIONER BRENNAN: Mr. Chairman.

CHAIRMAN JAMES: Commissioner Brennan.

COMMISSIONER BRENNAN: I offer the following

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1 motion as a substitute motion for the motion of  
2 Commissioner Garcia. The Copyright Royalty Tribunal  
3 resolves in principle:

4 1. The copyright royalty rates established  
5 by 17 USC 111(d)(2)(b) and the gross receipts limitations  
6 established by 17 USC (d)(2)(C) and (D) shall be adjusted  
7 as of the first semi-annual accounting period of 1981.

8 2. That interim inflation adjustments prior  
9 to the commencement of the next cable adjustment proceeding  
10 are not in accordance with the intent of the relevant cable  
11 provisions of the copyright law.

12 3. That inflation shall be measured by the  
13 Consumer Price Index.

14 4. That the cable industry has failed to  
15 establish that regulatory restraint or any other factor  
16 relating to the maintenance of the level of payments  
17 should be adopted as an extenuating factor in the rate  
18 adjustment authorized by the copyright law.

19 5. That the royalty rates shall be adjusted  
20 on an industry-wide basis to reflect, in the period from  
21 October 19, 1976 to January 1, 1980 the difference between  
22 inflation and the change in subscriber rates.

23 6. The gross receipts limitations shall be  
24 adjusted by the measure of inflation as of January 1, 1980  
25 from October 1976; and

1                   7. The Tribunal directs that not later than  
2 December 15, the parties shall submit proposed regulations  
3 and any appropriate cost of living data in accordance with  
4 the terms of this resolution.

5                   I move the adoption of this motion.

6                   CHAIRMAN JAMES: Any discussion or debate?

7                   In principle, what we have, what we will be  
8 voting on is an adjustment of the royalty rate based on a  
9 system by system, pursuant to Commissioner Garcia's motion  
10 or an industry-wide adjustment, pursuant to  
11 Commissioner Brennan's motion. Does everybody understand  
12 the question?

13                   COMMISSIONER BRENNAN: Parliamentary inquiry.  
14 The vote will occur on my motion.

15                   CHAIRMAN JAMES: One vote. The substitute  
16 passes, that is the vote. Commissioner Brennan?

17                   COMMISSIONER BRENNAN: Yes.

18                   CHAIRMAN JAMES: Commissioner Coulter?

19                   COMMISSIONER COULTER: Yes.

20                   CHAIRMAN JAMES: Commissioner Burg?

21                   COMMISSIONER BURG: Yes.

22                   CHAIRMAN JAMES: Commissioner Garcia?

23                   COMMISSIONER GARCIA: No.

24                   CHAIRMAN JAMES: The Chair notes no.

25                   There are three "ayes" and two "nays". The

1 motion carries.

2 Is there any further business of the Tribunal?

3 COMMISSIONER GARCIA: That being the case, I  
4 remove my original proposal.

5 COMMISSIONER BRENNAN: I don't quite understand.  
6 I think the three to two vote has already removed your  
7 proposal.

8 COMMISSIONER GARCIA: You are right. I am  
9 sorry. I was confused. I thought you offered an amendment.

10 CHAIRMAN JAMES: We will reconvene December 17,  
11 1980 in this room.

12 MR. ATTAWAY: Mr. Chairman, could I ask a  
13 question about Commissioner Brennan's proposal?

14 CHAIRMAN JAMES: You will get a copy of it.

15 (Whereupon, at 10:10 a.m., the hearing was  
16 adjourned, to reconvene on December 17, 1980.)

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Pursuant to 17 U.S.C. §801(b)(2)(A) and (D) respectively, and §804,  
37 C.F.R. Chapter III is hereby amended as follows:

By adding a new Part 308, to read as follows:

§308.1 General

§308.2 Royalty Rate for Compulsory License for  
Secondary Transmission by Cable Systems

§308.3 Cost of Living Adjustment

§309.4 Adjustment for First Semiannual Period  
of 1981

§308.1 General

(a) This Part 308 establishes terms and rates of royalty payments in accordance with the provisions of 17 U.S.C. §§111 and 801(b)(2)(A) and (D). Upon compliance with 17 U.S.C. 111 and the terms and rates of this Part, a cable system entity may engage in the activities set forth in 17 U.S.C. 111.

(b) Definitions. (1) "Basic service" shall mean the average first set monthly rate.

(2) "Surcharge" shall mean the difference between the change in the Consumer Price Index and the change of a systems basic subscriber rates since October 1976.

(3) "Surcharge Factor" shall mean the surcharge would be applied to the total royalty rate or royalty payment.

§308.2 Royalty Rate for Compulsory License for  
Secondary Transmission by Cable Systems

(a) Commencing with the first semiannual accounting period of 1981 and for each semiannual accounting period thereafter, the royalty rates established by 17 U.S.C. §111(d)(2)(B) shall be adjusted to maintain the real constant dollar level of the royalty fee per subscriber which existed as of October 19, 1976.

(b) Such adjustment shall consist of a "surcharge" to be added to each cable system's semiannual pre-adjusted royalty payment as prescribed by the regulations of 37 C.F.R. §201.17 or any amendment thereof in effect on December 1, 1980. The "surcharge" shall be computed by each individual cable system in accordance with the following procedure:

- (1) Each cable system shall calculate its change in the average rates charged cable subscribers for the basic service of providing secondary transmission by dividing its average monthly first set subscriber rate for residential service in effect on the last day of the accounting period by its average first set monthly rate for residential service in effect on October 19, 1976. If the cable system did not have subscriber rates in effect on October 19, 1976, or those rates are not known, the sum of \$6.60 shall be used for purposes of this calculation.
- (2) Each cable system shall calculate its "Surcharge Factor" by dividing the change in the cost of living as published by the Copyright Royalty Tribunal by that system's basic service rate. If the result of this division is 1.000 or less, no surcharge shall be applicable.
- (3) The adjusted royalty payment shall be determined by each cable system by multiplying its pre-adjusted royalty payment by its "Surcharge Factor."

§308.3 Cost of Living Adjustment

(a) On December 31 and June 30 of each year the Copyright Royalty Tribunal (CRT) shall publish in the Federal Register a notice of the change in the cost of living as determined by the Consumer Price Index (all urban customers, all items) from the first Index published subsequent to October 19, 1976, to the last Index published prior to the Tribunal's notice.



(b) Commencing with the second semiannual accounting period of 1981 and for each semiannual accounting period thereafter, the gross receipts limitations established by 17 U.S.C. §111(d)(2)(C) and (D) shall be adjusted according to the change in the cost of living determined as provided in paragraph (a). Such royalty rates shall be fixed at the nearest tenth of a cent.

(c) Such adjustment shall be computed by each individual cable system for purposes of determining whether it qualifies for the statutory exemption and for computing its royalty payments in accordance with the following procedure:

(1) Each cable system shall calculate its change in average basic service rate as set forth in §308.2

(2) Each cable system shall adjust the gross receipts limitations set forth in 17 U.S.C. §111(d)(2)(C) and (D) by multiplying such limitations by its change in average basic service rate.

§308.4 Adjustment for First Semiannual Period of 1981

(a) The change in the cost of living as determined by the Consumer Price Index (all urban consumers, all items) from the first Index published subsequent to October 19, 1976, to December 15, 1980 is 49.83%.

(b) For the first semiannual accounting period of 1981, the gross receipts limitations established by 17 U.S.C. §111(d)(2)(C) and (D) shall be adjusted in accordance with the change as provided in paragraph (a).

## ERRATA SHEET

CHANGE

TO